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**Marquez Brothers Enterprises, Inc. and Alfonso Mares and Javier Avila.** Cases 21–CA–039581 and 21–CA–039609

December 16, 2014

**DECISION AND ORDER**

BY MEMBERS HIROZAWA, JOHNSON,  
AND SCHIFFER

On June 25, 2012, the Board issued a Decision and Order in this proceeding, which is reported at 358 NLRB No. 61 (2012). Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and the General Counsel filed a cross-application for enforcement.

At the time of the Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. On November 18, 2014, the court of appeals vacated the Board's Decision and Order and remanded this case for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the judge's decision and the record in light of the exceptions and briefs. We have also considered the now-vacated Decision and Order, and we agree with the rationale. Accordingly, we adopt the judge's recommended Order to the extent and for the reasons stated in the Decision and Order reported at 358 NLRB No. 61, which is incorporated herein by reference.<sup>1</sup>

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<sup>1</sup> In finding a notice reading appropriate, we do not rely on *Jason Lopez' Planet Earth Landscape*, 358 NLRB No. 46 (2012), cited in the vacated Decision and Order.

We shall modify the judge's recommended Order and notice to conform to our recent decision in *Don Chavas, LLC d/b/a Toritillas Don Chavas, LLC*, 361 NLRB No. 10 (2014). We shall also substitute a new notice in accordance with *Durham School Services*, 360 NLRB No. 85 (2014).

Member Johnson disagrees with his colleagues' decision to order a notice-reading remedy in this case. The Board has recognized that this extraordinary remedy may be warranted "where the violations are so numerous and serious that the reading aloud of a notice is considered necessary to enable employees to exercise their Section 7 rights in an atmosphere free of coercion, or where the violations in a case are egregious." *Postal Service*, 339 NLRB 1162, 1163 (2003). Here, the Re-

**ORDER**

The Respondent, Marquez Brothers Enterprises, Inc., City of Industry, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for supporting Teamsters Local 63, International Brotherhood of Teamsters, or any other union.

(b) Coercively encouraging employees to ask the Union to return authorization that the employees had signed.

(c) Coercively interrogating any employee about union support or union activities.

(d) Threatening any employee with unspecified reprisals because he engaged in union activity.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, offer Alfonso Mares and Javier Avila full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Alfonso Mares and Javier Avila whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(c) Compensate Alfonso Mares and Javier Avila for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

(d) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for

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spondent's unfair practices, though serious, do not rise to what has traditionally been regarded as an egregious level of misconduct. See *A-1 Door & Building Solutions*, 356 NLRB No. 76, slip op. at 1 fn.1 (2011) (citing *Ishikawa Gasket America, Inc.*, 337 NLRB 175, 176 (2001)). Accordingly, Member Johnson would not find a notice-reading remedy appropriate in these circumstances.



good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in City of Industry, California, copies of the attached notice in English and Spanish marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 2, 2010.

(g) Within 14 days after service by the Region, hold a meeting or meetings, scheduled to ensure the widest possible attendance, at which the attached notice, Appendix, is to be read to the employees in both English and Spanish by the Respondent's chief executive officer or, at the Respondent's option, by a Board agent in that officer's presence.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 16, 2014

Kent Y. Hirozawa, Member

Harry I. Johnson, III, Member

Nancy Schiffer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

#### NOTICE TO EMPLOYEES

#### POSTED BY ORDER OF THE

#### NATIONAL LABOR RELATIONS BOARD

#### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting Teamsters Local 63, International Brotherhood of Teamsters, or any other union.

WE WILL NOT coercively encourage employees to ask the Union to return authorization that the employees had signed.



WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT threaten you with unspecified reprisals because you engaged in union activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Alfonso Mares and Javier Avila full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Alfonso Mares and Javier Avila whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest compounded daily.

WE WILL compensate Alfonso Mares and Javier Avila for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharges of Alfonso Mares and Javier Avila, and WE WILL,

within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

MARQUEZ BROTHERS ENTERPRISES, INC.

The Board's decision can be found at [www.nlr.gov/case/21-CA-039581](http://www.nlr.gov/case/21-CA-039581) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

